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Discussion of substantive issues related to international cooperation in tax matters: other issues: capacity-building

United Nations Capacity Development Programme on International Tax Cooperation

Note by the Secretariat

1. The paper contained in the annex to the present note provides an overview and update on progress in implementation of the United Nations capacity development programme on international tax cooperation under the responsibility of the Financing for Development Office of the Department of Economic and Social Affairs.

* E/C.18/2016/1.

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Annex

United Nations capacity development programme on international tax cooperation

I. Link to the Addis Ababa Action Agenda and the 2030 Agenda for Sustainable Development

1. The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda) and the 2030 Agenda for Sustainable Development (2030 Agenda) recognize capacity development as an integral part of the global partnership for sustainable development. They call for enhanced international support and the establishment of multi-stakeholder partnerships for implementing effective and targeted capacity-building in developing countries to support national plans to achieve the Sustainable Development Goals, including through North-South, South-South and triangular cooperation.

2. In a major expansion of the Monterrey Consensus and the Doha Declaration, the Addis Ababa Action Agenda devotes an area specifically to addressing capacity-building, which includes an overarching commitment to reinforcing national efforts in this area in developing countries, and also contains commitments to capacity-building in each of the other action areas, underscored by the principle that capacity development must be country-driven, address the country-specific needs and conditions and reflect national sustainable development strategies and priorities.

3. In the area of domestic resource mobilization, both the Addis Ababa Action Agenda and the 2030 Agenda refer to the need for assistance to developing countries in order to improve their domestic capacity for tax and other revenue collection. The Addis Ababa Action Agenda contains commitments to provide international support to developing countries in need in reaching targets for enhancing domestic revenue, as well as to strengthen international cooperation, including through enhanced official development assistance (ODA), with a view to supporting the efforts of these countries to build national capacity.

4. The Addis Ababa Action Agenda stresses the need to scale up international tax cooperation and recommends that efforts in this regard be universal in approach and scope and fully take into account the different needs and capacities of all countries. In this regard, it recognizes the need for technical assistance through multilateral, regional, bilateral and South-South cooperation, based on the different needs of countries.

5. In addition, the Addis Ababa Action Agenda calls for more inclusiveness and emphasizes the importance of the participation of developing countries in this work, including through their regional networks, in order to ensure that all countries can obtain benefit from it. To that end, it welcomes the work of the Committee of Experts on International Cooperation in Tax Matters, including its subcommittees, which provides a forum for inclusive cooperation and dialogue among national tax authorities, giving special attention to developing countries.

II. Mandate

6. In its resolutions 2013/24 and 2014/12, the Economic and Social Council reiterated and expanded the mandate given to the Financing for Development Office of the Department of Economic and Social Affairs in the area of capacity development. The Council recognized the progress made by the Financing for Development Office in its work in developing, within its mandate, a capacity development programme on international tax cooperation aimed at strengthening the capacity of the ministries of finance and national tax authorities in developing countries to develop more effective and efficient tax systems, which support the desired levels of public and private investment, and to combat tax evasion. It also requested the Office, in partnership with other stakeholders, to continue its work in this area and to further develop its activities.

III. Relationship with the Committee

7. Owing to the fact that the Financing for Development Office provides secretariat support to the Committee, its programme of capacity development on international tax cooperation draws, to a large extent, on the outputs of the Committee, with a view to disseminating and operationalizing them as capacity development tools for the benefit of developing countries. To that end, the Financing for Development Office conducts training and other capacity development events, and also delivers technical cooperation programmes by making use of materials based on the major outputs of the Committee, including the United Nations Model Double Taxation Convention between Developed and Developing Countries and the *United Nations Practical Manual on Transfer Pricing for Developing Countries*. In addition, the Financing for Development Office produces inputs for the work of the Committee at its request: for example, the development of practical papers on the negotiation of tax treaties, which were developed as an input into the latest revision of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

> In order to facilitate the dissemination and use of the *United Nations Practical Manual on Transfer Pricing for Developing Countries* among developing countries, the Financing for Development Office has developed the United Nations course on transfer pricing, as well as the primer on transfer pricing. Both of these training programmes have been developed in consultation with and drawing upon contributions by representatives of developing countries, members of the Committee of Experts, as well as representatives from relevant international and regional organizations.
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> The course and the primer have been successfully introduced both in Africa, in cooperation with the African Tax Administration Forum, and in Latin America and the Caribbean, in cooperation with the Inter-American Center of Tax Administrations. To date, tax officials from 34 countries in both regions have participated in training programmes on the course and the primer. The Financing for Development Office plans to continue delivering these training programmes at the regional level, including in other regions. Moreover, to further increase dissemination, an online version of the primer will be developed.

Following the success of the above-mentioned training programmes, several countries have expressed interest in country-level technical assistance, drawing upon the *United Nations Practical Manual on Transfer Pricing for Developing Countries*. A first pilot technical cooperation project is being implemented for the internal revenue service (Servicio de Rentas Internas) of Ecuador.

8. In devising and implementing its capacity development programme, the Financing for Development Office also takes full advantage of the unique expertise and networks of the members of the Committee, who are involved in an advisory/expert role. They support the programme in several ways, including by: (a) contributing to identifying the needs of developing countries for capacity development in the area of international tax cooperation; (b) assisting in assessing what resources are already available and proposing tools to be developed in order to fill in the existing gaps and address the needs of developing countries; (c) providing inputs to and feedback on the development of capacity-building materials and undertaking a technical review of these materials; and (d) participating in and contributing to capacity development events organized by the Financing for Development Office.

9. The Committee has also set up an advisory group on capacity development, which is mandated to make recommendations on capacity-building and the provision of technical assistance to developing countries in the area of international cooperation in tax matters. To that end, the advisory group is to engage with the United Nations capacity development programme on international tax cooperation to ensure that the activities of the programme adequately reflect the work of the Committee, take into account the needs of developing countries, especially the least developed ones, and do not duplicate but effectively complement existing tools and resources at the disposal of developing countries.

IV. Key features

10. The United Nations programme of capacity development on international tax cooperation is focused on challenges and priorities of developing countries, especially the least developed countries. Recognizing the fact that countries with more experience in dealing with international tax matters may benefit from more advanced capacity development tools and initiatives already made available by other providers, the programme aims to support countries with less experience in order to bring them up to date and place them in a position to benefit from other existing tools and initiatives as well.

11. A distinct feature of the programme, which comprises a collection of capacity development tools and other resources on international tax cooperation, is that its development and implementation is the result of a unique collaborative engagement among Government representatives from developing countries, members of the Committee, a diversified group of world-renowned experts and representatives of relevant international and regional organizations. Consultations with tax officials from developing countries during all phases of the development and implementation

of activities play a critical role in ensuring that these activities are truly demand-driven, relevant and effective for the beneficiary countries.

> The *United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries* was developed through the collaborative efforts and with the contribution of officials from national tax authorities and ministries of finance in 35 developing countries, representing all regions of the world, as well as with members of the Committee, renowned international tax experts and representatives from international and regional organizations, including the African Tax Administration Forum, the East African Community, the Inter-American Center of Tax Administrations, the International Tax Compact and the Organization for Economic Cooperation and Development (OECD).

12. Cooperation and coordination with other international organizations and experts are sought in order to promote complementarities and avoid duplication, with due regard to their respective areas of focus, expertise and comparative advantages. Emphasis is placed also on partnering with regional organizations of tax administrations, including the African Tax Administration Forum and the Inter-American Center of Tax Administrations. Thanks to their networks, knowledge of tax systems and tax administrations and engagement in providing ongoing assistance to countries in their respective regions, they are uniquely positioned to provide support in identifying the demand for capacity development activities, implementing them at the regional level and ensuring their sustainability.

> The Financing for Development Office and the Inter-American Center of Tax Administrations joined forces to implement a project aimed at strengthening the capacity of tax administrations in developing countries in Latin America and the Caribbean to measure tax transaction costs in small and medium enterprises. The project focused on the development of an empirical methodology to assess both compliance costs borne by taxpayers and tax collection costs faced by tax administrations. This was undertaken with a view to identifying possible reforms to reduce these costs and, as a result, achieving greater compliance and more effective and efficient tax systems, leading to sustainable increases in Government revenues available for the funding national development goals.
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> The above-mentioned methodology was developed in consultation with representatives from 13 developing countries in Latin America and the Caribbean and was pilot tested in Costa Rica and Uruguay. Subsequently, it was also used by tax administrations in Brazil and Chile. The methodology and the results of its pilot testing are presented in the publication entitled "Measuring Tax Transaction Costs in Small and Medium Enterprises" (available in English and in Spanish).

V. Areas of work

A. Double tax treaties

13. Work in the area of double tax treaties, drawing on the United Nations Model Convention, is the most advanced. In this area, the Financing for Development Office carries out a series of capacity development initiatives.

14. The United Nations Course on Double Tax Treaties introduces the fundamentals of double tax treaties and provides participants with a good understanding of the United Nations Model Convention, including the similarities with and differences from the OECD Model Tax Convention on Income and on Capital. The course, which is usually delivered in a regional setting, provides instruction by world-renowned experts and United Nations staff. Regional experts are invited to provide practical insights and relevant examples from their country practices throughout the course. It also combines theoretical aspects with a large amount of practical material in the form of examples and cases studies, which are discussed in small groups. The interactive nature of the course and inclusion of regional aspects facilitates South-South sharing among participants.

> The United Nations Course on Double Tax Treaties was developed through a unique collaborative engagement among a diverse group of authors and contributors, numerous members of the Committee and United Nations staff. In addition to analysing the treaty rules for the allocation of taxation rights between countries over cross-border income, the course deals with treaty provisions for the elimination of international double taxation and administrative provisions aimed at ensuring effective application of tax treaties.
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> The course has been successfully delivered both in Africa, in cooperation with the African Tax Administration Forum, and in Latin America and the Caribbean, in cooperation with the Inter-American Center of Tax Administrations. To date, tax officials from 44 countries in both regions have participated in these events. The Financing for Development Office will continue delivering these training programmes at the regional level, including in other regions.

15. The United Nations Course on Double Tax Treaties is accompanied by the use of the United Nations primer on double tax treaties, which provides a brief introduction to the basic aspects of tax treaties. It is intended for tax officials with no prior experience in this area. It also serves as a pre-requisite for participants in the course, with a view to providing them with some common basics and enabling them to benefit more fully from the course. An online version of the primer is being developed.

16. In the area of tax treaty negotiation, following a recommendation by members of the Committee, the United Nations joined forces with OECD in establishing the United Nations-OECD practical workshop on negotiation of tax treaties, which is offered to tax treaty negotiators from developing countries on a biennial basis. At the request of the Committee, the Financing for Development Office has also

worked on the development of a series of practical papers on issues in tax treaty negotiation from the perspective of developing countries, which were issued as "Papers on Selected Topics in Negotiation of Tax Treaties for Developing Countries". These papers were presented to the Committee as an input into its work in this area and a summary of their content was included in the recently released update of the Manual for Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, which has been developed by the Committee through its Subcommittee on Negotiation of Tax Treaties — Practical Manual.

> The United Nations-OECD practical workshop on negotiation of tax treaties provides tax treaty negotiators from developing countries with hands-on experience in tax treaty negotiation. It features simulated negotiations of all the provisions of a tax treaty between two fictitious countries (a developed and a developing country), drawing on both the United Nations Model Double Taxation Convention between Developed and Developing Countries and the OECD Model Tax Convention on Income and on Capital. The first two sessions of the workshop (held in 2014 and 2016 respectively) were attended by representatives from 37 developing countries.

17. In the area of tax treaty administration, as part of a project implemented jointly with the International Tax Compact, the Financing for Development Office has developed the *United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries*. This publication, which is specifically designed for developing countries, aims to provide them, in particular those countries drawing upon the United Nations Model Convention, with practical guidance to effectively implement double tax treaties. The *Handbook*, which is available in English, French and Spanish, is used at capacity-building events, including workshops and seminars dealing with specific issues in administering tax treaty provisions.

B. Transfer pricing

18. The *United Nations Practical Manual on Transfer Pricing for Developing Countries* aims to respond to the need, often expressed by developing countries, for clearer guidance on the policy and administrative aspects of applying transfer-pricing analysis to intra-group transactions of multinational enterprises. In particular, it is aimed at countries seeking to apply the "arm's length standard" to transfer pricing issues, as endorsed both in the United Nations Model Convention and in the OECD Model Convention.

19. The United Nations Course on Transfer Pricing, which is based on the *United Nations Practical Manual*, aims to operationalize it among relevant authorities in developing countries, with a view to supporting them in dealing with transfer pricing. To that end, it provides an introduction to transfer pricing principles and methodologies and addresses the main practical issues faced by developing countries in applying these principles and methodologies. Similar to the United Nations Course on Double Tax Treaties, it is delivered in a regional setting, with the participation of experts from the tax administrations in the respective region, who

provide practical insights and relevant examples from their country's practices throughout the course.

20. The course is complemented by the United Nations primer on transfer pricing, which is intended for officials with limited or no experience in this area, providing a general overview of basic concepts of transfer pricing. It also serves as a prerequisite for participants in the course, with a view to providing them with some common basics and enabling them to benefit fully from the course.

C. Protecting the tax base of developing countries

21. The main tool developed by the Financing for Development Office in the area of tax base protection for developing countries is the *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries*, which was presented at the third International Conference on Financing for Development (Addis Ababa, 13-16 July 2015) as a tangible deliverable towards the objectives of the Conference. The *Handbook* is intended to strengthen the capacity of developing countries to increase their potential for domestic revenue mobilization by protecting and broadening the tax base. To that end, it draws upon the work done in this area by the Committee, and its relevant subcommittees, including the Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries, as well as the work of OECD on the subject, as appropriate, with a view to complementing that work from the capacity development angle for the benefit of developing countries. In particular, the *Handbook* aims to simplify, summarize and systematize all relevant materials, with a view to providing information geared towards the needs of developing countries, including through the provision of practical examples tailored to the realities of those countries.

> In developing the *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries* special efforts were made to seek inputs and feedback from developing countries, members of the Committee and relevant international and regional organizations. To that end, the Financing for Development Office organized two ad hoc workshops in cooperation with OECD, which were held in New York and in Paris. Government officials from 21 developing countries representing all regions of the world, several members of the Committee as well as representatives from the African Tax Administration Forum, the Inter-American Center of Tax Administrations, the United Nations Economic Commission for Latin America and the Caribbean and the International Tax Compact participated in and contributed to these meetings. Their comments and suggestions were taken into account in reviewing the draft chapters and finalizing the *Handbook*.

22. The *Handbook* is intended to assist developing countries in three important areas: (a) engagement and effective participation in relevant international norm-setting and decision-making processes, including in OECD forums; (b) assessment of relevance and feasibility of different options to protect and broaden their tax base, including those proposed in the context of the OECD work on base erosion and profit shifting; and (c) effective and sustained implementation of the most

suitable options from which they would benefit. To that end, the *Handbook* provides a study of the work of OECD on base erosion and profit shifting, along with an analysis of the strategies proposed to address the relevant issues. In doing so, it aims to support developing countries in identifying the most appropriate modalities to protect their tax base, taking into account their needs and levels of development, as well as resource and capacity constraints. In addition to dealing with matters that are also considered in the context of the work of OECD on base erosion and profit sharing, with a view to reviewing the underlying fundamental policy and implementation aspects from the perspective of developing countries, the *Handbook* also addresses other topics, which developing countries have reported to be of particular relevance to them in protecting their tax base, namely: the taxation of cross-border services; the taxation of capital gains realized by non-residents; and tax incentives.

23. Currently, the Financing for Development Office is working on the development of an updated and expanded edition of the *Handbook*, taking into account new emerging issues and the latest international developments regarding base erosion and profit sharing and the protection and broadening of the tax base of developing countries. In addition, in order to complement and operationalize the *Handbook* through more in-depth and hands-on practical guidance, as well as to make it accessible to a broader audience of relevant stakeholders in developing countries, the Financing for Development Office is developing a series of practical portfolios on protecting the tax base of developing countries. These practical materials are intended to assist tax officials in developing countries to recognize the main causes of tax base erosion in their countries and to identify relevant issues in the context of their domestic tax law and network of tax treaties, with a view to assessing the various options available to them to effectively address these issues.

24. At present, the Financing for Development Office is working on finalizing a first set of practical portfolios which deal with base-eroding payments for services, interest, rents and royalties. Based on the demand expressed by developing countries on several occasions, additional practical portfolios will be developed addressing further issues of particular interest and relevance to developing countries, including on general anti-abuse rules and taxation of capital gains.

> The first set of draft practical portfolios on base-eroding payments was shared and discussed with a number of Government officials from 30 developing countries, members of the Committee, as well as representatives of international and regional tax organizations, at two workshops, one held in Panama City in June 2015, and the other in Berlin in December 2015.
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> The Financing for Development Office plans to hold further consultations with representatives from developing countries both on the existing draft practical portfolios and on the drafts of additional practical portfolios that will be developed to address other relevant issues in protecting the tax base of developing countries, with a view to more comprehensively capturing and reflecting the point of view of these countries in the final versions of these materials.